

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT COURT OF NEW MEXICO

STATE OF NEW MEXICO <i>ex rel.</i>	)	
State Engineer, <i>et al.</i> ,	)	69cv07941-MV/KK
	)	
Plaintiffs,	)	RIO CHAMA ADJUDICATION
	)	
v.	)	Section 3, Rio Cebolla
	)	
RAMON ARAGON, <i>et al.</i> ,	)	Subfile Nos. CHCB-001-0007,
	)	CHCB-002-0001B, CHCB-002-0002C
Defendants.	)	CHCB-002-0009
_____	)	

**DEFENDANTS' RESPONSE TO STATE'S OBJECTIONS TO DEFENDANTS'  
PROPOSED EXHIBITS IN RIO CHAMA, SECTION 3, RIO CEBOLLA SUBFILES**

COMES NOW the undersigned Attorney, Ted J. Trujillo, on behalf of the Defendants Charlie Chacon and Geralda M. Chacon and the Delfin O. and Frances S. Quintana Trust, and at the direction of Judge Kirtan Khalsa in the January 12, 2017 Pre-Trial Hearing, the undersigned herein responds to the State's Objections to Defendants' Proposed Exhibits in Rio Chama, Section 3, Rio Cebolla Subfiles, (Doc. 11181), filed on November 22, 2016. The Exhibit Titles or headings used by the State in its Objections are repeated herein in order to provide clarity as to the Exhibit identified and discussed.

**Defense Exhibits to which the State Objects:**

- A.2 – The Stephen D. Hardin Map
- A.3 – Township Map
- A.4 – The Dills Map
- B.1 – Excerpt from Malcolm Ebright Report
- B.2 – Cebolla Vegetation Comparison
- C.1 – Aerial Photograph
- C.2 – CHCB 001-0007 Subfile Maps
- D.1 – About 200 Photographs of Claimed Irrigated Acreage

D.2 – Video of Old Valdez Ditch Running Down to Alfalfita Field (marked as D.3)

E.1 – Deeds

E.3 – Venceslao Martinez Ditch Declaration

F.1.a) through F.1.d) – Depositions

F.2.a) – “History” by Charlie Chacon and Attached Affidavits

F.2.b) – Affidavits

F.3 through F.9 – Homestead Documents

F.10 – Letters from H.J. Guthmann and Medardo Sanchez

Unmarked Exhibit – Receipts from the U.S. National Archives & Records Administration.

I. Defendants’ Exhibits Withdrawn for Cause.

**A.2 – The Stephen D. Hardin Map**

Defendants withdraw the Stephen D. Hardin Map in accordance with the Court order filed on February 17, 2016 (Doc. 11108). Notwithstanding the withdrawal of this Exhibit, Defendants have received leave of the Court at the Pre-Trial Hearing on January 12, 2017 to develop a Demonstrative Exhibit showing the locations of the Defendants’ water rights claims within the subject area. This Demonstrative Exhibit is pursuant to Federal Rule of Evidence 611, 1006. Defendants are instructed by the Court to provide this Demonstrative Exhibit to the State ten days before trial, which would be February 10, 2017. Given the lack of time to the trial, Defendants intend to utilize Mr. Hardin to develop the Demonstrative Exhibit based on the ready availability of the electronic files for the project. Defendants’ lay witnesses will be able to refer to the Demonstrative Exhibit pursuant to Federal Rule of Procedure, 701 and 401.

**A.4 – Dills Map**

Defendants withdraw the Dills Map because its probative value to the Defendants’ case is marginal, except as a possible rebuttal exhibit.

**B.1 – Excerpt from Malcolm Ebright Report**

Defendants withdraw this Exhibit Report because its probative value to the Defendants’ case is marginal, except as a possible rebuttal exhibit.

**B.2 – Cebolla Vegetation Comparison**

Defendants withdraw the Cebolla Vegetation Comparison in accordance with the Court order filed on February 17, 2016 (Doc. 11108), except as a possible rebuttal exhibit.

### **C.1 – Aerial Photograph**

Defendants withdraw this aerial photograph, until it can authenticate its origin.

### **D.2 --Video of Old Valdez Ditch Running Down to Alfalfita Field**

Defendants have shortened this video down to 9 minutes and seek to have it accepted into evidence, otherwise it remains as a possible rebuttal exhibit. A copy of same will be produced to the State.

## **II. Defendants' Exhibits to be Admitted.**

### **A.3 – Township Map**

The Township Map is identified in Defendants' Exhibit list as follows:

#### *A. Survey Exhibits*

*“Surveyor General Henry M. Atkinson, December 6, 1883 survey “Map of Township No. 27, North range No. 4 East of Principal Meridian New Mexico”, showing cultivated land in Tia Josefa pasture.”*

The State expresses a lack of understanding regarding this exhibits dates. The date shown, December 6, 1883, is the date the survey began. The date of approval of the survey by Surveyor General Atkinson was February 8, 1884. When Defendants' exhibits were timely provided to the State in a binder, the Defendants' Trial Exhibit List was also provided with this information. There should be no misunderstanding as to who could testify regarding this Exhibit, including the State's own witnesses, whether lay, expert or rebuttal. As quoted above, the survey contains relevant information regarding irrigation in 1884 of the Tia Josefa pasture, and adjoining lands, now claimed by the Defendants.

### **C.2 – CHCB 001-0007 Subfile Maps**

The two subfile aerial-based maps are admitted to show features on the Defendants' claimed properties, El Alto, Tia Josefa, Sanchez Ditch, Old Valdez Ditch

and not for any discussion of Federal Rule of Evidence 408 as alleged by the State and as unknown to Defendants.

**D.1 – About 216 Photographs of Claimed Irrigated Acreage and D.2 - Video**

Pursuant to the direction of Magistrate Judge Kirtan Khalsa, in response to the State's concern, Defendants agreed to select down the photographs in this file to a fraction of the number and produce same to the State on or by January 20, 2017. The Defendants have selected 68 photographs from the 216 photographs and labeled them in Defendants' Amended Trial Exhibit List, D. 1. A #1 through #30, and B #1 through #38 and the Video has been selected down to a running time of 9 minutes.

**E.1—Deeds**

This exhibit of deeds should be deemed admitted, subject to challenge of the State at trial.

**E.2 – “Statement of Old Water rights filed June 27, 1932 by Cebolla property Owners**

This exhibit was deemed admitted at the January 12, 2017 Pre-Trial Conference.

**E.3 – Venceslao Martinez Ditch Declaration**

This exhibit was deemed admitted at the January 12, 2017 Pre-Trial Conference.

**F.1.a) through F.1.d) – Depositions**

Pursuant to the January 12, 2017 Pre-Trial Conference, the depositions could be admitted as trial depositions in the event that any of the deponents, all of whom are elderly, would not be able to provide testimony at trial. The three deponents are Charlie Chacon, Mary Martinez and Ernest Sanchez.

**F.2.a) – “History” by Charlie Chacon and Attached Affidavits**

The State's counsel uses a quotation of Charlie Chacon without identifying its origin in order to make substantive legal arguments regarding “seeped” designations in

case law that have nothing to do with the admissibility of the exhibit. Similarly, the State's counsel paraphrases Charlie Chacon to have said that he knows that the Alfalfita field was irrigated before his birth, and it was impossible for him to know that first hand. The State overly looks that obvious – which is that he learned about the early irrigation of the Alfalfita from other individuals, family and neighbors, born early than him.

As for the other Affidavits in this Exhibit, there are Affidavits that were collected before or at the beginning of the Rio Chama Adjudication, many of which have been filed and stamped by the State Engineer. These documents constitute regularly kept business records by the State and should be admitted.

#### **F.2.b) – Affidavits**

The Affidavits in this Exhibit, were collected before or at the beginning of the Rio Chama Adjudication, many of which have been filed and stamped by the State Engineer. These documents constitute regularly kept business records and should be admitted.

#### **F.3 through F.9 – Homestead Documents**

The homestead documents are deemed admitted. However, the State objects to Spanish Deeds that are not accompanied by any English translation. Defendants counsel will agree to accept the English translation of these Spanish Deeds by the certified Spanish to English translator employed by the State.

#### **F.10 – Letters from H.J. Guthmann and Medardo Sanchez**

The State has alleged that the Defendants did not include the water rights claims of this lawsuit in the 1949-1953 Survey and Declaration by Turley, and therefore do not have any water rights as claimed. This exhibit is relevant because it shows, along with other documents, that the Defendants' predecessors, Patricio Chacon and Medardo Sanchez, made several attempts to get surveyor Turley back to Cebolla in order to pick up the omitted irrigated parcels but were unsuccessful in their attempts.

#### **F-11 – Letter to State Engineer from Jose I. Maes, dated April 12, 1972 irrigation on the Pinabetal**

This exhibit is offered because it offers evidence that from 1969 to 1972 there was a shortage of irrigation water due to very dry winters, springs and summers.

**F-12, Declaration of Ownership of Water Right (Perfected Prior to March 19, 1907), F-13 Application for Permit and F-14 License to Appropriate Water**

These three exhibits are regularly kept records in the Office of the State Engineer that show the efforts of Patricio Chacon in 1949, 1951 and 1932 to document his water rights.

**Unmarked Exhibit – Receipts from the U.S. National Archives & Records Administration.**

This packet is not an exhibit but as business records they may be used to authenticate certain of Defendants' exhibits.

LAW OFFICE OF TED J. TRUJILLO

*/s/ Ted J. Trujillo*

By: \_\_\_\_\_

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Certificate of Service

I certify that the foregoing was filed electronically in the CM/ECF system, serving the parties in the service list, as set forth in the Notice of Electronic Filing.

*/s/ Ted J. Trujillo*

Ted J. Trujillo